



December 3, 1999

Ms. Sharron L. Swann
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OR99-3472

Dear Ms. Swann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130081.

The Amarillo Hospital District (the "district"), which you represent, received a request for eight categories of information related to compensation paid to health care providers.¹ The district has provided a representative sample of the responsive information to this office for review.² The district argues that release of the physician's name, compensation and benefit information contained in current employment agreements, as well as "provider specific" information used to project revenue, implicates rights of third parties. You contend that this information is excepted from public disclosure by sections 552.101 and 552.110 of the Government Code. Representatives of the implicated parties have provided comments in support of these arguments. The requestor has also supplied comments to this office,

¹We note that Exhibit D of the submitted documents includes items that the district submitted in a previous request, assigned ID 128160. The decision responsive to that earlier request was pending at the time the district submitted the current request, but has now been issued as Open Records Letter No. OR99-2943 (1999). That decision is controlling for the release or withholding of the information subject to that decision.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

asserting that the subject information is expressly made public by section 552.022 of the Government Code.

We first note that the Public Information Act requires a governmental body that wishes to withhold requested information to (1) request a decision from the attorney general as to whether the information is within an exception to disclosure, (2) provide the requestor a copy of that request for decision, and (3) and provide the requestor a statement that the governmental body wishes to withhold the information and has sought a decision from the attorney general. Gov't Code § 552.301. These actions must be taken by the governmental body within ten business days of the governmental body's receipt of the request for information. *Id.* The governmental body must also provide to the attorney general (1) written comments stating the reasons why the stated exceptions apply to the requested information, (2) a copy of the request for information, (3) a signed statement of the date the request for information was received by the governmental body, or sufficient evidence to establish that date, and (4) a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy. Gov't Code § 552.301(e). These actions must be taken by the governmental body within fifteen business days of the governmental body's receipt of the request for information. *Id.* If the governmental body does not comply with the requirements of section 552.301 of the Government Code, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302.

You acknowledge that the district failed to timely request a decision. The information is therefore presumed subject to public disclosure. A compelling reason for withholding information is demonstrated where that information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977). Therefore, we shall consider your arguments and comments of third parties, and review the submitted information.

Since the subject information is contained in documents involving the entity Healthcare Professional Associates ("HPA"), we first look to the application of the Public Information Act to the records of that entity. The Open Records Act requires "governmental bodies" to make public, with certain exceptions, information in their possession. Section 552.003 of the Government Code defines "governmental body," in part, as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Gov't Code § 552.003(a)(10). Courts, as well as this office, previously have considered the scope of the Public Information Act's definition of "governmental body." In *Kneeland*

v. National Collegiate Athletic Association, 850 F.2d 224 (5th Cir. 1988), *cert. denied*, 488 U.S. 1042 (1989), the United States Court of Appeals for the Fifth Circuit recognized that opinions of the attorney general do not declare private persons or businesses “governmental bodies” subject to the act “‘simply because [the persons or businesses] provide specific goods or services under a contract with a government body.’” *Kneeland*, 850 F.2d at 228 (quoting Open Records Decision No. 1 (1973)). Rather, when interpreting the predecessor to section 552.003 of the Government Code, the *Kneeland* court noted that the attorney general’s office generally examines the facts of the relationship between the private entity and applies three distinct patterns of analysis:

The opinions advise that an entity receiving public funds becomes a governmental body under the Act, unless its relationship with the government imposes “a specific and definite obligation . . . to provide a measurable amount of service in exchange for a certain amount of money as would be expected in a typical arms-length contract for services between a vendor and purchaser.” Tex. Att’y Gen. No. JM-821 (1987), *quoting* ORD-228 (1979). That same opinion informs that “a contract or relationship that involves public funds and that indicates a common purpose or objective or that creates an agency-type relationship between a private entity and a public entity will bring the private entity within the . . . definition of a ‘governmental body.’” Finally, that opinion, citing others, advises that some entities, such as volunteer fire departments, will be considered governmental bodies if they provide “services traditionally provided by governmental bodies.”

Id.

As the *Kneeland* court noted, when considering the breadth of the definition of “governmental body,” this office has distinguished between private entities receiving public funds in return for specific, measurable services and entities receiving public funds as general support. For example, in Open Records Decision No. 228 (1979), we considered whether the North Texas Commission (the “commission”), a private, nonprofit corporation chartered for the purpose of promoting the interests of the Dallas-Fort Worth metropolitan area, constituted a “governmental body” under the Public Information Act. Open Records Decision No. 228 at 1.(1979). The contract existing between the commission and the City of Fort Worth obligated Fort Worth to pay the commission \$80,000 per year for three years. *Id.* The contract obligated the commission to, among other things, “[c]ontinue its current successful programs and implement such new and innovative programs as will further its corporate objectives and common City’s interests and activities.” *Id.* at 2. In response to this provision, we stated, “[e]ven if all other parts of the contract were found to represent a strictly arms-length transaction, we believe that this provision places the

various governmental bodies which have entered into the contract in the position of '*supporting*' the operation of the Commission with public funds within the meaning of section 2(1)(F)." *Id.* (Emphasis added.) Accordingly, we found the commission to be a governmental body for purposes of the Open Records Act. *Id.*

You represent that HPA is organized under the authority of Vernon's Texas Civil Statutes article 4495b, § 5.01. We note that the amended articles of incorporation of this entity specify that HPA shall be administered solely for the benefit of certain identified governmental bodies. Those articles also indicate that the assets of HPA shall be distributed exclusively by specified governmental entities upon the dissolution of HPA. From our review of the presented arguments, comments and supporting documents, we conclude that HPA is a "governmental body" for purposes of the Public Information Act.

The 76th Legislature amended section 552.022 of the Government Code, to provide several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law."³ In pertinent part this section now reads

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body

Thus, the subject contracts and information indicating past revenues are expressly made public and must be released unless made confidential under other law.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The courts have held that information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person *and* the information is of no legitimate concern to the public. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Financial information concerning an individual is in some cases protected by a

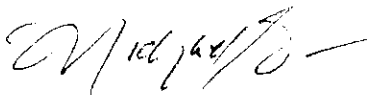
³Act of May 25, 1999, 76th Leg. R.S. ch 1319, §5, 1999 Tex. Gen. Laws 4500, 4501-4502 (effective September 1, 1999).

common-law right of privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 523 (1989). However, because information regarding a financial transaction between a person and a governmental body is a matter of legitimate public interest, such information does not meet the second prong of the *Industrial Foundation* test, and common-law privacy does not protect this information from disclosure. Open Records Decision Nos. 600 (1992), 385 at 2 (1983). Thus, neither the contracted salary information nor the cash flow generation information of health care providers who have contracted to provide services to a governmental body are excepted from public disclosure by a right of privacy under section 552.101 of the Government Code.

Lastly, you assert that “the employment contracts constitute commercial and financial information protected from disclosure under section 552.110 of the Government Code. Section 552.110(b) provides, “Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.” You represent that these contracts have been released with physician name, compensation, and benefits redacted. You have not alleged any evidence of specific harm that the release of this information would cause to any party. Further, the compensation and benefits information is not obtained from the physicians, but is a negotiated contract term and the names of the contracting parties cannot be construed as “commercial or financial” information. We conclude that this information is not excepted from public disclosure by section 552.110 of the Government Code.

As no compelling reason has been demonstrated for withholding the responsive information, it must be released unless previously determined to be excepted from disclosure under Open Records Letter No. OR99-2943 (1999). We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 130081

Encl. Submitted documents

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